

**ASSEMBLY BILL**

**No. 1566**

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**Introduced by Committee on Banking and Finance (Nava (Chair),  
Evans, Fong, Fuentes, Mendoza, Ruskin, Swanson, and Torres)**

March 16, 2009

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An act to amend Section 4406 of the Commercial Code, relating to financial institutions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1566, as introduced, Committee on Banking and Finance.  
Banking: disclosures.

Existing law provides that a bank that sends or makes available account statements to its customers either return or make available items paid from the account, or provide information in the statement sufficient to allow the customer reasonably to identify the items paid. Existing law specifies that an account statement provides sufficient information, if it includes the item number, the amount, and the date of payment. The requirements that the account enable a customer to “reasonably” identify items paid and specifying the minimum information sufficient to identify the items paid will cease to be operative on January 1, 2010.

This bill would extend the operation of those provisions until January 1, 2015.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4406 of the Commercial Code, as  
2 amended by Section 1 of Chapter 41 of the Statutes of 2005, is  
3 amended to read:

4     4406. (a) A bank that sends or makes available to a customer  
5 a statement of account showing payment of items for the account  
6 shall either return or make available to the customer the items paid  
7 or provide information in the statement of account sufficient to  
8 allow the customer reasonably to identify the items paid. The  
9 statement of account provides sufficient information if the item is  
10 described by item number, amount, and date of payment. If the  
11 bank does not return the items, it shall provide in the statement of  
12 account the telephone number that the customer may call to request  
13 an item, a substitute check, or a legible copy thereof pursuant to  
14 subdivision (b).

15     (b) If the items are not returned to the customer, the person  
16 retaining the items shall either retain the items or, if the items are  
17 destroyed, maintain the capacity to furnish legible copies of the  
18 items until the expiration of seven years after receipt of the items.  
19 A customer may request an item from the bank that paid the item,  
20 and that bank shall provide in a reasonable time either the item or,  
21 if the item has been destroyed or is not otherwise obtainable, a  
22 legible copy of the item. If the paid item requested by a customer  
23 was presented as a substitute check, the bank shall provide, in a  
24 reasonable time, either the substitute check or, if the substitute  
25 check has been destroyed or is not otherwise obtainable, a legible  
26 copy of the substitute check. A bank shall provide, upon request,  
27 and without charge to the customer, at least two items, substitute  
28 checks, or legible copies thereof, with respect to each statement  
29 of account sent to the customer.

30     (c) If a bank sends or makes available a statement of account  
31 or items pursuant to subdivision (a), the customer shall exercise  
32 reasonable promptness in examining the statement or the items to  
33 determine whether any payment was not authorized because of an  
34 alteration of an item or because a purported signature by or on  
35 behalf of the customer was not authorized. If, based on the  
36 statement or items provided, the customer should reasonably have  
37 discovered the unauthorized payment, the customer shall promptly  
38 notify the bank of the relevant facts.

1 (d) If the bank proves that the customer failed, with respect to  
2 an item, to comply with the duties imposed on the customer by  
3 subdivision (c), the customer is precluded from asserting any of  
4 the following against the bank:

5 (1) The customer's unauthorized signature or any alteration on  
6 the item if the bank also proves that it suffered a loss by reason of  
7 the failure.

8 (2) The customer's unauthorized signature or alteration by the  
9 same wrongdoer on any other item paid in good faith by the bank  
10 if the payment was made before the bank received notice from the  
11 customer of the unauthorized signature or alteration and after the  
12 customer had been afforded a reasonable period of time, not  
13 exceeding 30 days, in which to examine the item or statement of  
14 account and notify the bank.

15 (e) If subdivision (d) applies and the customer proves that the  
16 bank failed to exercise ordinary care in paying the item and that  
17 the failure contributed to loss, the loss is allocated between the  
18 customer precluded and the bank asserting the preclusion according  
19 to the extent to which the failure of the customer to comply with  
20 subdivision (c) and the failure of the bank to exercise ordinary  
21 care contributed to the loss. If the customer proves that the bank  
22 did not pay the item in good faith, the preclusion under subdivision  
23 (d) does not apply.

24 (f) Without regard to care or lack of care of either the customer  
25 or the bank, a customer who does not within one year after the  
26 statement or items are made available to the customer (subdivision  
27 (a)) discover and report the customer's unauthorized signature on  
28 or any alteration on the item is precluded from asserting against  
29 the bank the unauthorized signature or alteration. If there is a  
30 preclusion under this subdivision, the payer bank may not recover  
31 for breach of warranty under Section 4208 with respect to the  
32 unauthorized signature or alteration to which the preclusion applies.

33 (g) As used in this section, "substitute check" shall have the  
34 same meaning as used in Section 229.2 of Title 12 of the Code of  
35 Federal Regulations.

36 (h) This section shall remain in effect only until January 1, ~~2010~~  
37 ~~2015~~, and as of that date is repealed, unless a later enacted statute,  
38 which is enacted before January 1, ~~2010~~ ~~2015~~, deletes or extends  
39 that date.

SEC. 2. Section 4406 of the Commercial Code, as amended by Section 2 of Chapter 41 of the Statutes of 2005, is amended to read:

4406. (a) A bank that sends or makes available to a customer a statement of account showing payment of items for the account shall either return or make available to the customer the items paid or provide information in the statement of account sufficient to allow the customer to identify the items paid. If the bank does not return the items, it shall provide in the statement of account the telephone number that the customer may call to request an item, a substitute check, or a legible copy thereof pursuant to subdivision (b).

(b) If the items are not returned to the customer, the person retaining the items shall either retain the items or, if the items are destroyed, maintain the capacity to furnish legible copies of the items until the expiration of seven years after receipt of the items. A customer may request an item from the bank that paid the item, and that bank shall provide in a reasonable time either the item or, if the item has been destroyed or is not otherwise obtainable, a legible copy of the item. If the paid item requested by a customer was presented as a substitute check, the bank shall provide, in a reasonable time, either the substitute check or, if the substitute check has been destroyed or is not otherwise obtainable, a legible copy of the substitute check. A bank shall provide, upon request, and without charge to the customer, at least two items, substitute checks, or legible copies thereof, with respect to each statement of account sent to the customer.

(c) If a bank sends or makes available a statement of account or items pursuant to subdivision (a), the customer shall exercise reasonable promptness in examining the statement or the items to determine whether any payment was not authorized because of an alteration of an item or because a purported signature by or on behalf of the customer was not authorized. If, based on the statement or items provided, the customer should reasonably have discovered the unauthorized payment, the customer shall promptly notify the bank of the relevant facts.

(d) If the bank proves that the customer failed, with respect to an item, to comply with the duties imposed on the customer by subdivision (c), the customer is precluded from asserting any of the following against the bank:

1 (1) The customer's unauthorized signature or any alteration on  
2 the item if the bank also proves that it suffered a loss by reason of  
3 the failure.

4 (2) The customer's unauthorized signature or alteration by the  
5 same wrongdoer on any other item paid in good faith by the bank  
6 if the payment was made before the bank received notice from the  
7 customer of the unauthorized signature or alteration and after the  
8 customer had been afforded a reasonable period of time, not  
9 exceeding 30 days, in which to examine the item or statement of  
10 account and notify the bank.

11 (e) If subdivision (d) applies and the customer proves that the  
12 bank failed to exercise ordinary care in paying the item and that  
13 the failure contributed to loss, the loss is allocated between the  
14 customer precluded and the bank asserting the preclusion according  
15 to the extent to which the failure of the customer to comply with  
16 subdivision (c) and the failure of the bank to exercise ordinary  
17 care contributed to the loss. If the customer proves that the bank  
18 did not pay the item in good faith, the preclusion under subdivision  
19 (d) does not apply.

20 (f) Without regard to care or lack of care of either the customer  
21 or the bank, a customer who does not within one year after the  
22 statement or items are made available to the customer (subdivision  
23 (a)) discover and report the customer's unauthorized signature on  
24 or any alteration on the item is precluded from asserting against  
25 the bank the unauthorized signature or alteration. If there is a  
26 preclusion under this subdivision, the payer bank may not recover  
27 for breach of warranty under Section 4208 with respect to the  
28 unauthorized signature or alteration to which the preclusion applies.

29 (g) As used in this section, "substitute check" shall have the  
30 same meaning as used in Section 229.2 of Title 12 of the Code of  
31 Federal Regulations.

32 (h) This section shall become operative on January 1, ~~2010~~  
33 2015.